

MINUTES

JOINT INTERIM LAND-USE STUDY GROUP

OCTOBER 25, 2007
CAPITOL ANNEX, ROOM 117
514 WEST JEFFERSON
BOISE, IDAHO

Study Group members in attendance were Co-Chairman Senator Russ Fulcher, Co-Chairman Representative Cliff Bayer, Senator Stan Bastain, Senator Shirley McKague, Senator Lee Heinrich, Senator Jim Hammond, Representative Phil Hart, Representative Lynn Luker, Representative Fred Wood, Representative Les Bock and Representative Bill Killen. Ad hoc members of the Study Group in attendance were Dan Chadwick, Idaho Association of Counties; Ken Harward, Association of Idaho Cities; and Anna Borchers-Canning, Meridian Planning & Zoning. Ad hoc members John Eaton, Idaho Association of Realtors, and Jeremy Pisca, Idaho Building Contractors Association were absent and excused. The Legislative Services Office staff member present was Paige Alan Parker.

Also in attendance were Justin Ruen, representing the Association of Idaho Cities; John V. Brewer, representing SANA; Cindy Reis and Vern Alleman, representing CAR; Kuna resident Margo Whale; Tim Tingey and Robert Chambers, representing the City of Pocatello; Phil Kushlan, representing the Capital City Development Corporation; Steve Rutherford, Hal Simmons and Patricia Nilssen, representing Boise City; Nichoel Baird Spencer, representing the City of Eagle; Don Johnson, representing the Idaho State Grange; Jessica McDonald and Kevin Price, representing the Idaho Association of Realtors; Chris Danley, representing the Ada County Highway District; Brent Wilson, representing Evans Keane LLP; Martin Bilbao, representing Skip Smyser; Gloria Parkvold, representing Valley Regional Transit; Charles Trainor, representing the Community Planning Association; Russ Dane, representing the Ada County Association of Realtors; Bill Mattox, representing the Cloverdale-Columbia Neighborhood Association; Ryan Armbruster, Elam & Burke P.A.; and Jedd Jones, representing Capital Investors.

Co-Chair Fulcher called the meeting to order at 12:36 p.m. **Senator Bastian moved that the minutes from September 13, 2007, be approved *with corrections*, seconded by Senator Hammond. The motion passed unanimously.**

Co-Chair Fulcher stated that the purpose of the meeting was to receive public testimony on the listed agenda topics. **Co-Chair Fulcher** distributed two Ada County Treasurer tax statements for the same parcel for 2004 and 2005, along with an October 19, 2007, letter of explanation from **Gregory B. Cade**, Bureau Chief, Property Appraisal Bureau of the Idaho State Tax Commission. A copy of these documents is available in the Legislative Services Office. **Co-Chair Fulcher** noted that the tax statements indicated an increase in property taxation for the

parcel of between 20 to 30 percent and that the Tax Commission's explanation was complex. He stated that these tax statements and the explanation provided a grounds for the Study Group's discussions.

Co-Chair Bayer addressed the brochure that had been distributed to the Study Group's members on the City of Boise's Fiscal Year Budget Public Hearing of August 14, 2007. A copy of that document is available at the Legislative Services Office. **Co-Chair Bayer** stated that the brochure had been provided by **Tonya Wallace**, Boise City Financial Services Manager, at the request of the Study Group during its September 13th meeting. **Co-Chair Bayer** noted that he had not had the opportunity to study the brochure. **Senator Hammond** observed that the brochure provided a breakdown of general fund categories. **Co-Chair Fulcher** suggested that the Study Group may examine the brochure deeper at its next meeting.

Co-Chair Fulcher opened the meeting to public testimony.

Cindy Reis stated that she has been an Idaho resident for eleven years. Upon moving to Idaho, she bought a one-acre lot and house with a Meridian address but was surprised to receive a notice of a proposed annexation into Boise City. Her house, which is served by a well and a septic tank, was annexed into Boise in 1999. Neither water nor sewer have been extended to her house since the annexation. The city has offered to extend these services, but the cost of the hookup is prohibitive.

Ms. Reis believes that the annexation of her property by Boise violated one of the principals of good government for which the Revolutionary War was fought, i.e., representation. Rather than allowing the people being annexed having a voice, the decision is made by the mayor and council of the annexing city. According to **Ms. Reis**, only the Category C-type annexation under the Idaho Code permits direct representation by those to be annexed, but only one Category C annexation has been proposed and it was withdrawn. **Ms. Reis** represented that with regard to special districts; the Idaho Code requires the consent of the residents to be included in the special district. However, annexation by a municipality trumps the special district boundaries. She stated that Idaho is one of a handful of states that permit forced annexation. She noted that Oregon requires a two-step annexation process: first a vote by the city residents as to whether an area will be annexed, and, second, a vote by those who would be annexed. Such a system would not lead to chaos as some assert. **Ms. Reis** opined that the government has usurped the right of representation by the existing annexation laws.

In response to **Ms. Borchers-Canning**, **Ms. Reis** confirmed that hers is a one-acre parcel with not city water or sewer. In response to **Co-Chair Fulcher**, **Ms. Reis** stated that the City of Meridian proposed a Category A annexation in 2002, but after **Ms. Reis** pointed out it did not meet the Category A requirements, it was dropped. Responding to **Representative Killen**, **Ms. Reis** stated that the proposed Category C annexation that was dropped was in Nampa.

Co-Chair Fulcher asked **Ms. Reis** what the impact of the annexation of her property had

on her tax bill. **Ms. Reis** said that she experienced an immediate 26% increase in her property tax and a subsequent increase in her property value assessment as a result of the annexation. Since the annexation, her property taxes have gone up 300%.

In response to **Senator Hammond's** inquiry as to the services she receives from Boise since the annexation, **Ms. Reis** stated that only a switch in the entity that provided the police services has changed. Fire services are now provided by Boise, but the Boise Fire Department is confused as to the needs of the neighborhood, failing to send a tanker truck in response to a house fire in the neighborhood when there were no hydrants present. Responding to **Representative Bock**, **Ms. Reis** stated that prior to annexation, she had access to the same library services that she has now.

Ms. Baird-Spencer addressed the Study Group and distributed two documents: an Example of Annexation/Taxation Issues on a 560 acre feed lot operation before annexation in 2004 and after annexation in 2007, and a comparison of levy assessment rates by taxing district between unincorporated and incorporated areas in Ada County. These documents are available at the Legislative Services Office. **Ms. Baird-Spencer** explained that because Eagle had a low levy rate when the three percent limit was imposed, annexation by Eagle results in a smaller property tax increase. Although the Eagle property tax for the 560 acre former feed lot was only incrementally higher than the Ada County tax on that same property, once that property was annexed, it was burdened with both the county and the city property tax. However, **Ms. Baird-Spencer** stated that part of that amount is due to the value added to that property by city planning, including the planning provided by the city's comprehensive plan. **Ms. Baird-Spencer** urged the Study Group not to mess with consent annexation and the city's ability to plan for future growth. She also noted that the approach to annexation in Washington and Oregon is to preserve agricultural land by not only making annexation more difficult but also by putting limits on counties to allow urban development.

Representative Bock asked **Ms. Baird-Spencer** to explain the difference between consensual and forced annexation as it relates to the extension of city services. **Ms. Baird-Spencer** stated that once city water and sewer services are extended, consent to annexation is implied even if the current landowner is not aware of the consent. City services are extended to such areas that are ripe for development as determined by the city's comprehensive plan.

Senator Bastian inquired as to the effect of allowing citizens to reject an annexation of contiguous land after the planning process has anticipated annexation. **Ms. Baird-Spencer** used a cake analogy to illustrate that changing the recipe ruins the cake. Similarly, changing the rules after the planning process has anticipated annexation prohibits the ability of a city to thrive. **Senator Bastian** disclosed that he is a member of the Eagle City Council and that Eagle has no forced annexation, only annexation by consent and upon request of the developers.

Senator Fulcher asked **Ms. Baird-Spencer** to comment on **Ms. Reis'** experience with forced annexation in 1999. **Ms. Baird-Spencer** began by noting that the annexation law has

changed since 1999, but that in any respect, **Ms. Reis** had been done a disservice. Although she bought land within Boise's area of impact which represented the expectations of Ada County and Boise, she had not been made aware of those expectations at the time she purchased and thus given the opportunity to purchase elsewhere. **Ms. Baird-Spencer** opined that better notification procedures may be required. However, a jurisdiction cannot be required to hold new elections every time someone moves in.

Ms. Borchers-Canning asked **Ms. Reis** whether she would have felt better about the 1999 annexation had Boise surrounded her property and commented that Meridian faces problems in providing services when faced with a "swiss cheese" city boundary with county enclaves. **Ms. Reis** stated that despite the 2002 amendments to the annexation law, the lack of representation principal is still the same. "Who created the enclave?" she asked, wondering if it was the fault of the landowner. She recognized that Meridian has been more even handed in its approach to annexation and that the 2002 law improved the disclosure that is required to be made to landowners.

Regarding **Ms. Reis'** situation, **Representative Bock** noted that she did not have city water or sewer and thus was treated unfairly by having to pay city taxes without receiving all the services. However, **Representative Bock** commented that in most situations, consent to annexation is a tradeoff for receiving such services. **Ms. Reis** responded by saying that people don't consent to annexation, the land consents. A change in the contract is the result.

Senator Bastian commented that Eagle has some areas within its boundaries that are not hooked up to city water and sewer due to their preference and the high cost of extending those services. However, those individuals do not pay the monthly city fee for those services. People who are annexed are not forced to hook up to city water and sewer.

Senator Bastian asked **Ms. Reis** whether she availed herself of city library and park services. **Ms. Reis** admitted that she has visited the Boise zoo, but otherwise does not use those services. **Senator Bastian** commented that Boise has regional parks and participates with other jurisdictions in interconnected library services. It also enters into interjurisdiction agreements to provide the closest responder police and fire protection. Whether there is a benefit to annexed landowners may be difficult to sort out.

Vern Alleman, a resident of Meridian, addressed the Study Group. He is opposed to forced annexation. Idaho is only one of two or three states that does not protect its citizens against the free will of government to annex. He encouraged the Study Group to allow a vote on any annexation. He wondered what reasons there might be to not allow citizens to vote on the important issues of taxes and property use. This includes the ability of a city to acquire property through eminent domain. Property rights need to be preserved if the United States is going to remain a great nation.

Margo Whale, who lives near Kuna, spoke to the Study Group. Eleven years ago she

received a special use permit from Ada County to construct a private airstrip on her property. In the process of obtaining the special use permit, she consulted with Kuna officials. Since then, a local improvement district was created to expand sewer services which promised rural lands located within the district three hookups per acre. A neighboring property with the three hookup per acre right has now been annexed into Kuna. Now she is threatened with the prospect of residential development at the end of her airstrip. She has a verbal agreement with her neighbor not to develop this land, but worries that he may sell the land to someone else who will not honor that agreement.

Ms. Whale informed the Study Group that Kuna is now undertaking to update its comprehensive plan. She has received some verbal commitment that Kuna intends to preserve her private airstrip but has been told that its use was not going to be recognized in the comprehensive plan. Instead, an industrial designation is being considered for that land. **Ms. Whale** has volunteered to serve on the committee that is updating the comprehensive plan but has not been appointed to that committee. **Ms. Whale** feels that her interests have not been adequately represented and is distrustful of both the city and the county. She wants to preserve the rural nature of her land and feels that the interests of individuals who are impacted by land use decisions should be considered. She has been told that Kuna has the right to annex these areas served with water and sewer, but that she does not have the right to vote on any such annexation.

In response to **Senator Fulcher**, **Ms. Whale** clarified that her concern with the local improvement district is that the three hookup per acre that it permits will allow residential development at the end of her airstrip, jeopardizing that usage. Although she has been told that the plat will recognize her airstrip, she understands that the city is not allowed to maintain the rural character of land in excess of one acre. In response to **Senator Heinrich**, **Ms. Whale** stated that the local improvement district was formed to increase the city's sewage capacity. Landowners were promised a number of hookups. But the local improvement district was not ratified until after the neighbor's land was annexed.

Representative Killen commented that state law has not prohibited McCall from assigning a rural preservation designation to parcels up to five acres. **Senator Hammond** agreed that a city may retain the agricultural character of land but that practical, economic realities mitigate against extending water and sewer services through rural areas with limited hookups unless these are high value lands. **Senator Bastian** expressed the view that **Ms. Whale** should be allowed to participate in Kuna's comprehensive plan update process and the use of her land as an airstrip should be recognized.

Co-Chair Fulcher asked the Study Group members for comments.

Senator Hammond noted that the impetus for development is often the landowner's desire to make a profit. Under those circumstances, the city is used as a tool to increase the value of the property. The city is placed in the dilemma of allowing the development or maintaining

the rural character of the land. By doing the latter, however, the right of the landowner to develop the land is affected. These conflicting demands are hard to balance.

Ms. Borchers-Canning observed that cities often react to the action taken by the county. There is always tension between what is allowed by the city and by the county. The issue is how to plan adequately for an area. She believes that Kuna did not undertake the best planning by using a local improvement district. She also observed that the Idaho Code, by limiting annexation of land not greater than five acres, does not allow cities the flexibility to plan for agricultural use.

Representative Bock commented that Idaho is experiencing a transition from rural to urban in North Idaho and in the Treasure Valley. The Legislature cannot prevent that transition, but it may be able to manage it. Traffic is increasing. Planning is needed. There are certain density requirements necessary for mass transit to be effective. In the process, some people will not get the best end of the deal.

Co-Chair Bayer opined that the situation is worse where the city comes to the landowner rather than where a person moves into a city. The interest of the landowner whose property is being threatened by the city needs to be taken into consideration. Often there is a lack of information, with consent to annexation coming to light after the fact. **Co-Chair Bayer** does not see a nexus between fee-based water and sewer and the implied consent arising from the hookup to these services. The tax base of a city is expanded by the provision of these services. Some cities will not annex unless it is providing the water and sewer services.

With regard to maintaining existing, rural use of property and the right to develop property, **Co-Chair Bayer** is not sure there is a nexus between availing property owners to city amenities and the best use of the property. Comprehensive planning plays a role. He believes it is less than optimal to run sewer trunk lines miles across rural properties to serve some high density area away from the city's boundaries. **Co-Chair Bayer** hoped that the Study Group can determine what good practices can be institutionalized.

Senator Bastian wondered what triggers the adjustment to an area of impact. Property rights are affected: enjoy the property as it is or change the status of the property through development. If the property is in the county, the county commissioner makes the decision. If the property is contiguous to the city, the property owner can approach the city, request annexation and develop the property in accordance with city standards. The county and the cities are each empowered to have comprehensive plans which may be at variance. There may be competition between the county and a city or between cities. Meanwhile, all the landowners are impacted.

Idaho could follow the Oregon urban growth boundary process, **Senator Bastian** observed, where the county controls the rural areas outside the city growth boundaries and the city controls the urban areas within those boundaries. If the land is located outside the grow

boundaries, its value is decreased and changing the growth boundary is difficult. **Senator Bastian** believes that adoption of the Oregon model will stop urban growth in the county controlled areas. In Idaho, the creation of areas of impact require negotiations between the county and the city, with the city making the request. Counties vary as to how facilitating they are to such requests. Where the county proves hostile, cities sometimes plan outside the designated area of impact.

Senator Bastian stated that generally, annexation is done in a friendly fashion. Where there is a pocket of land with its own wells and septic, the matter is more difficult. He believes that better notification of implied consent is required where the land is within an area of impact and is receiving city services.

Ryan Armbruster of the law firm of Elam & Burke P.A. next addressed the Study Group. **Mr. Armbruster** disclosed that he has represented several urban renewal districts (URDs) over the years, but that his comments to the Study Group were not intended to be advocative. **Mr. Armbruster** distributed a handout to the Study Group which outlined the legal development of URDs in Idaho. A copy of that handout is available at the Legislative Services Office. **Mr. Armbruster** summarized the more salient points of the handout to the Study Group. **Mr. Armbruster** explained that the term “revenue allocation financing” is used in Idaho rather than “tax incentive financing.” Under revenue allocation financing, any increases in property tax revenues for property within the URD is retained for use in the URD. Although taxing districts that lie within the URD do not reap the benefit of any tax revenue increases based on URD property, there may be spin-off benefits to those taxing entities from the operation of the URD, such as increased sale tax revenues. **Mr. Armbruster** then stood for questions.

In response to **Representative Luker**, **Mr. Armbruster** stated that the process to amend URD boundaries is the same as the initial establishment of the URD. An amendment to an URD need not involve a change in its boundaries but may be undertaken to adjust to evolving circumstances. If new land is added, it must meet the same requirement of deterioration as required of the initial land. With newly added land, the revenue allocation base level starts at the time of inclusion. **Mr. Armbruster** told **Representative Luker** that whether deterioration has occurred in an area is determined by the city council, not the URD.

Representative Bock asked whether all the land upon which the Idaho Center is built was deteriorated. **Mr. Armbruster** replied that not all the area has to be deteriorated to be included within the URD.

Representative Hart asked **Mr. Armbruster** how a taxpayer might be convinced that an URD is a reasonable use of the taxpayer’s money. **Mr. Armbruster** replied that an URD is based on the assumption that without an infusion of tax moneys to build infrastructure, development of the area will not occur. He gave the example of BoDo in downtown Boise where, without a parking structure, the developer would not have come in. **Representative Hart** asked whether the purpose of the URD was to promote economic development and create jobs or

mitigate public problems such as crime. **Mr. Armbruster** responded by saying that cities have used URDs for both. The Idaho Code recognizes both purposes with chapter 20 addressing slums and blight and chapter 29 addressing economic development. To justify creation of an URD, **Mr. Armbruster** stated that the taxpayer needs to look at the organic plan development, determine where the money is going and ask, “Will the development eliminate further decline and create an opportunity for development?”

Representative Luker asked about the definitions of “deteriorated” and “deteriorating” in the Idaho Code and the factors used to make those determinations, including the “diversity of ownership” criteria. **Mr. Armbruster** explained that diversity of ownership typically occurs in blighted areas, making it difficult to gather the properties together and develop them without an URD. **Representative Luker** inquired whether the “diversity of ownership” factor alone would justify the classification of an area as deteriorated. **Mr. Armbruster** responded that, theoretically, that was correct since the statute does not require that each property have each of the criteria; however, in practice, several of the criteria are present.

Representative Bock asked about the disposition of the revenues coming off URD properties. **Mr. Armbruster** stated that, for the most part, property tax revenues generated from the increased value of land within the URD stay in the URD and do not become part of a general fund. There is a possibility that isolating revenues generated from increased property values into the URD may impact other taxing districts by causing their levy rates to increase incrementally, but, as **Senator Hammond** noted, this possibility has been diminished due to HB 79 and the three percent cap. **Senator Hammond** also noted that the creation of jobs through the URD benefits all and that taxing districts with land within the URD enjoy the benefits of the increased land values once the URD closes out. **Mr. Armbruster** added that studies indicate that the number of jobs created and the increase in property values due to the operation of URDs has been astounding.

Senator Bastian wondered whether school districts are negatively impacted due to the retention of property tax revenues within the URD resulting from increased property values. **Mr. Armbruster** answered that there may be varying views on this but that an analysis of an URD in Coeur d’Alene indicated that the impact was minimal. **Mr. Armbruster** stated that it is true that any revenues generated by a school district levy increase is retained in the URD. Another question is whether increased property values within the URD can be applied to a school district’s bonding capacity. According to **Mr. Armbruster**, the opinion of bond counsel is that it can be so applied. Responding to **Senator Bastian**, **Mr. Armbruster** stated that the bond levy revenue stays within the URD during the duration of the URD, but that the URD does not have the authority to establish levy rates. In response to **Representative Killen**, **Mr. Armbruster** clarified that the URD does not take the base property tax revenues existing at the time the URD is established.

Senator Hammond inquired as to the role of the Association of Idaho Cities in the review of URDs in Idaho. **Ken Harward**, the Executive Director of the Association of Idaho

Cities, stated that the Association has been asked to explore how the URD statute might be improved and has been receiving suggestions. **Mr. Harward** agreed to share these thoughts with the Study Group at its next meeting. **Dan Chadwick** stated that the Idaho Association of Counties is cooperating with the Association of Idaho Cities in this matter.

Representative Killen asked whether an intergovernmental agreement was required if the URD extended beyond the city's boundary. **Mr. Armbruster** responded that the 2000 amendments to the statute requires such intergovernmental agreements and that Idaho Falls and Meridian have entered into such intergovernmental city/county agreements with their counties. **Representative Wood** asked what would happen if the county refused to enter into such an agreement. **Mr. Armbruster's** reply was that in such a circumstance, the plan would be ineffective for any area outside the city.

Representative Wood wondered whether a county can form a URD that overlaps an existing URD. **Mr. Armbruster** stated that the statute does not contemplate such a possibility but that the Joint Powers Agreement Act may permit it.

Mr. Armbruster responded to **Representative Luker** that URDs do not create any negative impact to small businesses or to homeowners outside the possible exercise of the power of eminent domain and that the eminent domain issues has already been addressed by the Legislature.

Representative Hart inquired whether the URD's boundaries created by the city council required a formal finding supported by documentation. **Mr. Armbruster** answered that a mandatory threshold finding was required which is usually done by resolution and supported by a consultant's report. The statute provides for contesting the action of the council by an aggrieved party. **Representative Luker** asked why the time to request review was limited to 30 days. **Mr. Armbruster** stated that the 30-day window was similar to other statutes which permit challenges to city council actions, such as challenges of planning and zoning decisions.

Representative Hart also asked whether the tax bill provides a breakdown on the share of taxes being retained in the URD. **Mr. Armbruster** commented that the statute does not so require but some jurisdictions, such as Ada County, have provided such a breakdown.

Senator Hammond wondered whether the other taxing districts could impact the creating of an URD. **Mr. Armbruster** replied that other taxing districts do not have a veto or consent right with regard to creating the URD, which is the province of the city council, although notice is required. According to **Mr. Armbruster**, the URD is focused on a specified geographical area and is committed to its development through good planning and with greater authority.

Senator McKague stated that she is familiar with the Nampa North End URD which built the Idaho Center with public moneys. **Mr. Armbruster** noted that the Idaho Center is a

public facility.

Senator Bastian asked about conflicts of interest of those who serve on the URD board. **Mr. Armbruster** explained that the statute does not prohibit a board member from owning or controlling land within the URD, but requires disclosure of such ownership and prohibits the acquisition of additional such land and the participation in any action affecting such property. In addition, the general conflict of interest laws apply.

Co-Chair Fulcher asked **Mr. Armbruster** who determines whether an area is blighted. **Mr. Armbruster** noted that the statute, while using the term “blight,” does not define that term. Instead, the defined terms are “deteriorated area” and “deteriorating area,” which specify the criteria which must be found by the municipality before the URD may be created.

Representative Luker asked for a clarification between these two, defined terms. **Mr. Armbruster** acknowledged that there may not be any substantive difference, other than the deterioration having happened or in the process of happening, but that these terms may also be used in tangential legislation involving the qualification for development block grants.

Co-Chair Fulcher asked the Study Group members to provide some direction on where the Study Group might proceed.

Representative Bock stated that he wanted to see some specific economic data on URDs that would support their represented positive impact.

Representative Luker commented that the tax incentive financing used to fund URDs may be a good thing, but wondered if there were any “horror stories” regarding condemnations by URDs or adverse impacts on other taxing districts. **Representative Killen** suggested that the Study Group should invite a representative of one of the URDs to attend if URD opponents are to address the Study Group.

Senator Hammond thought it would be helpful to see the economic benefits of URDs which might be weighed against the challenges to the URDs. He noted that some of the challengers are persons who have proceeded with development without the creation of an URD and who want to understand why other developers have obtained the assistance of a city council or a county commission. He recognized that the decision to create an URD may be subjective and be based both on data and intuition.

Mr. Chadwick, in response to **Senator Heinrich**, stated that a county tax assessor could be made available to address the Study Group at its next meeting.

Representative Wood commented that the name “Urban Redevelopment District” is confusing, since it focuses on “urban” rather than on the use of tax incentive financing to redevelop an area which may not be urban. He suggested that simply changing the name may be helpful.

Co-Chair Fulcher summarized that the goal of the Study Group was to improve fairness in land-use. He acknowledged that the topics addressed by the Study Group have been challenging and that it might not be possible to obtain 100% consensus. However, the Study Group might be able to agree on limited steps to improve the process. He requested that the Study Group members forward any suggestions that they may have for doing so to **Mr. Parker** at the Legislative Services Office.

The next meeting is scheduled for November 29, 2007, between 12:30 and 4:30 p.m. in room 117 of the Capitol Annex. The meeting adjourned at 4:15 p.m.